

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

H. CHRISTOPHER BARNES, M.D., an
individual,

Plaintiff,

vs.

JFK MEMORIAL HOSPITAL, INC., and
DOES 1 through 10, inclusive,

Defendant.

Case No. **5:17-cv-00681-JGB-SP**
Assigned to the Hon. Jesus G. Bernal
Crtrm.: 1

**ORDER GRANTING STIPULATED
PROTECTIVE ORDER**

Action Filed: April 10, 2017

1. INTRODUCTION

1.1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1.2. GOOD CAUSE STATEMENT

This action is likely to involve: (1) confidential medical records and information of non-parties; (2) other “Protected Health Information (“PHI”) as defined in 45 Code of Federal Regulations (“CFR”) section 160.103 of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); (3) confidential peer review materials; (4) “medical information” as defined in California Civil Code section 56.05(g); (5) confidential personnel information; (6) private financial information; and/or (7) other proprietary information. Special protection from public disclosure of such information, and from use for any purpose other than prosecution of this action, is warranted under state and federal law, court rules, case decisions, and common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure

1 that the parties are permitted reasonable necessary uses of such material in
2 preparation for and in the conduct of trial, to address their handling at the end of the
3 litigation, and serve the ends of justice, a protective order for such information is
4 justified in this matter. It is the intent of the Parties that information will not be
5 designated as confidential for tactical reasons and that nothing be so designated
6 without a good faith belief that it has been maintained in a confidential, non-public
7 manner, and there is good cause why it should not be part of the public record of this
8 case.

9 **2. DEFINITIONS**

10 2.1. Action: *H. Christopher Barnes v. JFK Memorial Hospital, et al*, Case No.
11 5:17-cv-000681-JGB-SP (C.D. Cal.).

12 2.2. Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

14 2.3. “CONFIDENTIAL” Information or Items: information (regardless of how it is
15 generated, stored or maintained) or tangible things that qualify for protection under
16 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
17 Statement.

18 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
19 support staff).

20 2.5. Designating Party: a Party or Non-Party that designates information or items
21 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.6. Disclosure or Discovery Material: all items or information, regardless of the
23 medium or manner in which it is generated, stored, or maintained (including, among
24 other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this matter.

26 2.7. Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as
28 an expert witness or as a consultant in this Action.

1 2.8. House Counsel: attorneys who are employees of a party to this Action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.9. Non-Party: any natural person, partnership, corporation, association, or other
4 legal entity not named as a Party to this action.

5 2.10. Outside Counsel of Record: attorneys who are not employees of a party to this
6 Action but are retained to represent or advise a party to this Action and have
7 appeared in this Action on behalf of that party or are affiliated with a law firm which
8 has appeared on behalf of that party, and includes support staff.

9 2.11. Party: any party to this Action, including all of its officers, directors,
10 employees, consultants, retained experts, and Outside Counsel of Record (and their
11 support staffs).

12 2.12. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
13 Material in this Action.

14 2.13. Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or
16 demonstrations, and organizing, storing, or retrieving data in any form or medium)
17 and their employees and subcontractors.

18 2.14. Protected Material: any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL.”

20 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material from
21 a Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only
24 Protected Material (as defined above), but also (1) any information copied or
25 extracted from Protected Material; (2) all copies, excerpts, summaries, or
26 compilations of Protected Material; and (3) any testimony, conversations, or
27 presentations by Parties or their Counsel that might reveal Protected Material.
28

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2. Manner and Timing of Designations.

2 Except as otherwise provided in this Order (see, e.g., second paragraph of
3 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
4 Material that qualifies for protection under this Order must be clearly so designated
5 before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

- 7 a) for information in documentary form (e.g., paper or electronic documents,
8 but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page
11 that contains protected material. If only a portion or portions of the
12 material on a page qualifies for protection, the Producing Party also must
13 clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins).

15 A Party or Non-Party that makes original documents available for inspection
16 need not designate them for protection until after the inspecting Party has indicated
17 which documents it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for inspection shall be
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
20 documents it wants copied and produced, the Producing Party must determine which
21 documents, or portions thereof, qualify for protection under this Order. Then, before
22 producing the specified documents, the Producing Party must affix the
23 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
24 portion or portions of the material on a page qualifies for protection, the Producing
25 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
26 markings in the margins).

- b) for testimony given in depositions that the Designating Party identify the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.
- c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3. Inadvertent Failures to Designate.

If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges.

Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2. Meet and Confer.

The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3. Burden.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the

1 material in question the level of protection to which it is entitled under the Producing
2 Party's designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 **7.1. Basic Principles.**

5 A Receiving Party may use Protected Material that is disclosed or produced by
6 another Party or by a Non-Party in connection with this Action only for prosecuting,
7 defending, or attempting to settle this Action. Such Protected Material may be
8 disclosed only to the categories of persons and under the conditions described in this
9 Order. When the Action has been terminated, a Receiving Party must comply with
10 the provisions of section 13 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a secure manner that ensures that access is limited to the persons
13 authorized under this Order.

14 **7.2. Disclosure of "CONFIDENTIAL" Information or Items.**

15 Unless otherwise ordered by the court or permitted in writing by the
16 Designating Party, a Receiving Party may disclose any information or item
17 designated "CONFIDENTIAL" only to:

- 18 a) the Receiving Party's Outside Counsel of Record in this Action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this Action;
- 21 b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this
23 Action;
- 24 c) Experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this Action and who have signed the
26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 27 d) the Court and its personnel;
- 28 e) court reporters and their staff;

- 1 f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and
3 who have signed the “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A);
- 5 g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the
7 information;
- 8 h) during their depositions, witnesses ,and attorneys for witnesses, in the
9 Action to whom disclosure is reasonably necessary provided: (1) the
10 deposing party requests that the witness sign the form attached as Exhibit
11 1 hereto; and (2) they will not be permitted to keep any confidential
12 information unless they sign the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
14 ordered by the court. Pages of transcribed deposition testimony or
15 exhibits to depositions that reveal Protected Material may be separately
16 bound by the court reporter and may not be disclosed to anyone except as
17 permitted under this Stipulated Protective Order; and
- 18 i) any mediator or settlement officer, and their supporting personnel,
19 mutually agreed upon by any of the parties engaged in settlement
20 discussions.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
22 **IN OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation
24 that compels disclosure of any information or items designated in this Action as
25 “CONFIDENTIAL,” that Party must:

- 26 a) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order;
28

- 1 b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Protective Order. Such notification
4 shall include a copy of this Stipulated Protective Order; and
5 c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with
8 the subpoena or court order shall not produce any information designated in this
9 action as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action to
14 disobey a lawful directive from another court.

15 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
16 **PRODUCED IN THIS LITIGATION**

17 a) The terms of this Order are applicable to information produced by a
18 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

- 26 1) promptly notify in writing the Requesting Party and the Non-
27 Party that some or all of the information requested is subject to a
28 confidentiality agreement with a Non-Party;

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without prior
3 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
4 parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 parties may incorporate their agreement in the stipulated protective order submitted
7 to the court.

8 **12. MISCELLANEOUS**

9 **12.1. Right to Further Relief.**

10 Nothing in this Order abridges the right of any person to seek its modification
11 by the Court in the future.

12 **12.2. Right to Assert Other Objections.**

13 By stipulating to the entry of this Protective Order no Party waives any right it
14 otherwise would have to object to disclosing or producing any information or item on
15 any ground not addressed in this Stipulated Protective Order. Similarly, no Party
16 waives any right to object on any ground to use in evidence of any of the material
17 covered by this Protective Order.

18 **12.3. Filing Protected Material.**

19 A Party that seeks to file under seal any Protected Material must comply with
20 Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
21 court order authorizing the sealing of the specific Protected Material at issue. If a
22 Party's request to file Protected Material under seal is denied by the Court, then the
23 Receiving Party may file the information in the public record unless otherwise
24 instructed by the Court.

25 **13. FINAL DISPOSITION**

26 After the final disposition of this Action, as defined in paragraph 4, within 60
27 days of a written request by the Designating Party, each Receiving Party must return
28 all Protected Material to the Producing Party or destroy such material. As used in

1 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected
3 Material. Whether the Protected Material is returned or destroyed, the Receiving
4 Party must submit a written certification to the Producing Party (and, if not the same
5 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
6 (by category, where appropriate) all the Protected Material that was returned or
7 destroyed and (2) affirms that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing any
9 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
12 reports, attorney work product, and consultant and expert work product, even if such
13 materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION).

16 Any violation of this Order may be punished by any and all appropriate
17 measures including, without limitation, contempt proceedings and/or monetary
18 sanctions.

19 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

20
21 DATED: April 25, 2018

22 By: 
23 Hon. Sheri Pym
24 United States Magistrate Judge
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
[date] in the case of *H. Christopher Barnes v. JFK Memorial Hospital, et al*, Case
No. 5:17-cv-000681-JGB-SP (C.D. Cal.). I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order. I further agree to
submit to the jurisdiction of the United States District Court for the Central District
of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action. I
hereby appoint _____ [print or type full
name] of _____ [print or type full address
and telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____